

1 HONORABLE PATRICIA C. WILLIAMS

2
3 Mr. Jeffrey B. Earl, Trustee
4 Earl & Earl, Inc. P.S.
5 1334 S. Pioneer Way
6 Moses Lake, WA 98837-2410
7 Attorneys for Plaintiffs
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9

10 UNITED STATES BANKRUPTCY COURT
11
12 EASTERN DISTRICT OF WASHINGTON (Spokane/Yakima)
13
14

15 In Re:

16
17 GARY A. PHIPPEN and LINDA E.
18 PHIPPEN,
19 Debtors.
20

21 JEFFREY EARL as TRUSTEE
22 Plaintiff
23

24 v.
25

26 PINETOP RENTAL PROPERTIES,
27 LLC, GARY A. PHIPPEN and LINDA
28 E. PHIPPEN, husband and wife,
29 JEFFREY PHIPPEN and JANE DOE
30 PHIPPEN, husband and wife, KEVIN
31 PHIPPEN and MARGIE PHIPPEN,
32 husband and wife.
33 Defendants
34

**ADVERSARY PROCEEDING
#11-80047-PCW**

Main Case No. 10-02148-
PCW7

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

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38 THIS MATTER came before the Court concurrently with the Motion of Trustee
39 Jeffrey B. Earl in the main case for approval of compromise. The Court, having
40 reviewed the submissions of the parties, and having heard the argument of Counsel at
41 a properly noticed telephonic hearing, finding good cause, and determining that entry
42 hereof in this Adversary Proceeding is necessary and appropriate to quiet title to the
43 property involved in both this case and the main Case, makes the following;
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49 ORDER
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I. FINDINGS OF FACT

1. On April 9, 2010, a petition for relief under Chapter 7 of Title 11 USC was filed by the debtors, Gary A. Phippen and Linda E. Phippen, in Lead Case No. 10-02148.
2. At filing of the Lead Case bankruptcy, Debtors were owners of no less than 51% of a Washington limited liability company, PINETOP RENTAL PROPERTIES, LLC (hereafter "PINETOP"). All interest of Debtors in PINETOP became, and remains, property of the bankruptcy estate.
3. PINETOP is the purported holder of a contract purchaser's interest in Chelan County, Washington real property legally described as;

Parcel A:

Lots 1, 2 and 3 and the North 15 feet of lot 4, all in Block 30, amended Great Northern Plat of Wenatchee, Chelan County, Washington, according to the plat thereof recorded in Volume 1 of Plats, Page 15

Parcel B:

Lots 31 and 32, Block 30, Amended Great Northern Plat of Wenatchee, Chelan County, Washington, according to the plat thereof recorded in Volume 1 of Plats, page 15, except the Northerly 2 inches of said Lot 32.

Tax Parcel No. 22 20 10 590 386

Commonly known as 207 Yakima Street, Wenatchee, WA.

This real property is an apartment building and will hereafter be referred to as the Vradenburg.

4. On October 1, 2007, a real estate contract was entered into between Charles C. Mussen and Katheryn A. Mussen, husband and wife, as seller, (hereinafter referred to as Mussen) and Pinetop Rental Properties, Inc., a purported Washington Corporation, as purchasers, recorded 10/1/07 under Chelan County Auditor's File No. 2266981. A copy of said Real Estate Contract is marked and attached as Exhibit A to the Complaint herein.

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- 1 5. A document entitled "Amendment and Memorandum of Real Estate
2 Contract" was dated April 8, 2010 and recorded under Chelan County
3 Auditors No. 2321627 on April 8, 2010. A copy of said Amendment and
4 Memorandum of Real Estate Contract is marked and attached as Exhibit B to
5 the Complaint.
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9 6. The said described real estate was, in effect, sold on a real estate
10 contract by Mussen to Pinetop Rental Properties, Inc., a Washington
11 corporation on 10/01/07. However, said corporation has never been in
12 existence.
13
14
15 7. The 10/01/07 Amendment and Memorandum of Real Estate Contract
16 (Exhibit B to the Complaint) was signed solely by "Gary A. Phippen" as its
17 "member/manager" of "Pinetop Rental Properties, LLC" and was signed also
18 by Gary A. Phippen and Linda E. Phippen as "Guarantors".
19
20
21 8. In this Adversary Proceeding, Plaintiff Trustee Jeffrey B. Earl contends, inter
22 alia, that this Amendment to Real Estate Contract was of no legal effect, that
23 Debtor Gary Phippen held the contract purchaser's interest in the
24 Vradenburg as of commencement of this case, and that the said interest
25 therefore became and remains property of the bankruptcy estate.
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29 9. In 2009, Roger McMahon and Stephanie McMahon, husband and wife,
30 (hereafter together "McMahon") obtained an Interim Judgment and a second
31 Judgment against Debtors in Chelan County, Washington Cause No. 09-2-
32 00372-1. The second judgment excluded the Interim judgment and was
33 entered October 13, 2009 in the amount of \$286,282.65. By operation of
34 Washington law, these judgments attached as a judgment lien against all real
35 property of the Debtor's in Chelan County, WA, including the Vradenburg, to
36 the extent of the Debtors' interest therein.
37
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41 10. The Creditors' Summary attached to the McMahon Proof of Claim (Main Case
42 Claims Register Claim No. 15) includes an explanation of these judgments
43 and the payments and credits applied thereto. Under that Proof of Claim,
44 \$379,279.94 of principal remains due on the judgment, plus interest.
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1 11. On March 4, 2010, the Chelan County Superior Court entered a Charging Order
2 that all units of Pinetop Rental Properties, LLC owned by Gary Phippen and
3 Linda Phippen be charged with payment of the unpaid balance of the
4 McMahon's second judgment. That order charged against the Debtors' LLC
5 units a total judgment of \$286,282.65 as of October 13, 2009 plus interest at
6 the rate of 9.247% thereafter on the portion of the judgment that was
7 principal and 12% on the portion of the judgment attributable to other sums.
8 The charging order filed March 4, 2010 is attached to the Declaration of
9 William Monnette filed in the Main Case (hereafter Charging Order). The
10 proper service of that Charging Order is verified by the Declaration of Mailing
11 attached to the Monnette Declaration.
12

13 12. The Contract Seller's interest in the Vradenburg remains held by Mr. and Mrs.
14 Charles Mussen, with a current balance due on the contract of approximately
15 \$550,000, plus interest at seven percent (7%) per annum.
16

17 13. The Chelan County Treasurer is owed real property taxes for the Vradenburg for
18 tax years 2009, 2010, and 2011, with total tax, interest and penalties due
19 now of approximately \$28,814.01.
20

21 14. The Washington Department of Revenue has filed a Creditor's claim in the main
22 case for \$6,647.71.
23

24 15. A number of liens currently cloud the title of the Vradenburg property. A Deed of
25 Trust encumbering the property is dated July 20, 2009 in which PINETOP is
26 the Grantor and CS Investments, Inc., a Nevada Corporation, is Grantee.
27 This Deed of Trust is recorded in the Chelan County Auditor records at AFN
28 # 2307688. The Deed of Trust secures the repayment of \$600,000.00.
29 PINETOP also executed an Assignment of Leases and Rents in favor of
30 Poplar Investments, Inc., a Nevada Corporation, in exchange for the receipt
31 of \$600,000.00. This Assignment was recorded July 23, 2009 in the Chelan
32 County Auditor records at AFN # 2307918. Additionally, Poplar Investments,
33 Inc. recorded a UCC Fixture Filing on August 10, 2009, this filing is recorded
34 in the Chelan County Auditor records at AFN # 2309270. These liens have
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1 been challenged by the Trustee and McMahon, but continue to cloud title to
2 the assets and require resolution.
3

- 4 16. The Trustee provided notice to CS Investments, Inc., and Poplar Investments,
5 Inc. of a the pending Motion for Settlement and Compromise , and of a prior
6 motion to sell the Vradenburg free and clear of liens, with no payment to
7 either of those entities, and neither CS Investments, Inc., nor Poplar
8 Investments, Inc. filed any objections thereto. Debtors have not claimed that
9 they received any consideration for the liens of CS Investments, Inc., or
10 Poplar Investments, Inc.
11
12 17. Notwithstanding that the automatic stay in the main case halted McMahon's
13 state court levy on the Debtors' Units in PINETOP, by separate Order
14 concurrently entered in that case it has been determined that McMahon may
15 now proceed to acquire all of those Units from the Trustee in lieu of further
16 levy or execution thereon.
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24 Based on the above Findings of Fact, the Court makes the following
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27 **II. CONCLUSIONS OF LAW**
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30 This court has jurisdiction of the parties and the subject matter of this action.
31

- 32 1. Gary A. Phippen was the only signer of the Real Estate Contract for the
33 Vradenburg on behalf of the non-existent corporate purchaser, and therefore
34 Gary A. Phippen acquired the purchaser's interest in that contract.
35
36 2. Gary A. Phippen attempted to assign the Contract Purchaser's interest in the
37 Vradenburg to Pinetop Rental Properties, LLC by the Amendment recorded
38 under Chelan County Auditors No. 2321627, and all defendants in this case
39 contend that such assignment was effective.
40
41 3. The Plaintiff Trustee no longer disputes Pinetop Rental Properties, LLC's
42 acquisition of the Contract Purchaser's interest in the Vradenburg, in view of the
43 above referenced concurrent transfer of the Debtors' units in PINETOP to
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McMahon, and agrees that the Court should reform the Amendment and quiet title in PINETOP accordingly. The Court should so order.

4. Because Debtors received no consideration therefore, and because Poplar Investments, Inc. filed no objection to the Trustee's motion for Settlement and Compromise and earlier proposed sale of the Vradenburg free and clear of its lien, after proper notices in the main case, its liens and claim should be adjudged void and of no effect as to PINETOP and the Vradenburg.
 5. Because Debtors received no consideration therefore, and because C&S Investments, Inc. filed no objection to the Trustee's motion for Settlement and Compromise and earlier proposed sale of the Vradenburg free and clear of its lien, after proper notices in the main case, its liens and claim should be adjudged void and of no effect as to PINETOP and the Vradenburg.
- Accordingly, it is hereby.

ORDERED, ADJUDGED AND DECREED

Title to the Contract Purchaser's interest in the Vradenburg is quieted and confirmed in Pinetop Rental Properties, LLC, a Washington Limited Liability Company, as against the remaining Defendants in this action, Poplar investments Inc and CS Investments, Inc, and those claiming though them, said property being legally described as;

Parcel A:

Lots 1, 2 and 3 and the North 15 feet of lot 4, all in Block 30, amended Great Northern Plat of Wenatchee, Chelan County, Washington, according to the plat thereof recorded in Volume 1 of Plats, Page 15

Parcel B:

Lots 31 and 32, Block 30, Amended Great Northern Plat of Wenatchee, Chelan County, Washington, according to the plat thereof recorded in Volume 1 of Plats, page 15, except the Northerly 2 inches of said Lot 32.

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3 Said title is quieted in PINETOP with 51% of the member units of PINETOP
4 vested in and held by McMahon.
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6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except being
7
8 subject to reopening this case in the event that a third party not herein identified files an
9
10 action claiming an interest in the Vradenberg or to further facilitate the vesting and
11
12 acquisition by McMahon of the Debtors' member units in PINETOP as ordered herein,
13 the remaining claim of this adversary proceeding shall be and are hereby dismissed.


14 Presented by:

15
16 EARL & EARL, INC. P.S.
17 Attorneys for Plaintiff
18

19 s/Jeffrey B. Earl
20 JEFFREY B. EARL, WSBA #12501
21

22 BAKKE LAW GROUP, PLLC
23 Attorneys for Defendants
24

25 By: /s/ Erik Bakke Sr.
26 Erik Bakke Sr.
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Patricia C. Williams
Bankruptcy Judge

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